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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,926	11/30/2001	Tzvi V. Rubenstein	EMC-01-187	5336

7590 09/17/2004

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EXAMINER

BONURA, TIMOTHY M

ART UNIT PAPER NUMBER

2114

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/997,926

Applicant(s)

RUBENSTEIN, TZVI V.

Examiner

Tim Bonura

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 11-13 is/are rejected.
- 7) ☒ Claim(s) 3-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2 and 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Witchel, et al, U.S. Patent Number 6,748,584.

3. Regarding claim 1:

a. Regarding the limitation of “establishing a criterion denoted as a code difference criterion for determining one or more acceptable program codes,” Witchel discloses a system in which a determination is made on a binary code as compared to a baseline binary file. (Lines 50-52 of Column 1).

b. Regarding the limitation of “selecting a first candidate program code”, Witchel discloses a system in which a version of source code is compared to a baseline version. (Lines 47-52 of Column 3).

c. Regarding the limitation of “selecting a first set of other candidate program codes has a predetermined number of member candidate program codes”, Witchel discloses a system baseline program version is selected for testing against a second version of code. (Lines 60-62 of Column 1 and Lines 36-41 of Column 2).

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- d. Regarding the limitation of “determining whether the first candidate program code is an acceptable program code based on a comparison of the first candidate program code to each member of the list set of other candidate program codes in accordance with whether the code difference criterion is satisfied”, Witchel discloses a system the versions of software are compared to one another for test coverage analysis, code change analysis, or failure analysis. (Lines 23-30 of Column 2).
- 4. Regarding claim 2, Witchel discloses a system wherein the comparison is done with binary source code. The baseline code and second code have different binary date due to compilers. (Line 50-62 of Column 1).
- 5. Regarding claim 11, Witchel discloses a system wherein the binary files are stored on a memory device. (Lines 3-15 of Column 8).
- 6. Regarding claim 12:
  - e. Regarding the limitation of “establishing a criterion denoted as a code difference criterion for determining one or more acceptable program codes,” Witchel discloses a system in which a determination is made on a binary code as compared to a baseline binary file. (Lines 50-52 of Column 1).
  - f. Regarding the limitation of “selecting a first candidate program code”, Witchel discloses a system in which a version of source code is compared to a baseline version. (Lines 47-52 of Column 3).
  - g. Regarding the limitation of “selecting a first set of other candidate program codes has a predetermined number of member candidate program codes”, Witchel discloses a

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system baseline program version is selected for testing against a second version of code.

(Lines 60-62 of Column 1 and Lines 36-41 of Column 2).

h. Regarding the limitation of “determining whether the first candidate program code is an acceptable program code based on a comparison of the first candidate program code to each member of the list set of other candidate program codes in accordance with whether the code difference criterion is satisfied”, Witchel discloses a system the versions of software are compared to one another for test coverage analysis, code change analysis, or failure analysis. (Lines 23-30 of Column 2).

7. Regarding claim 13, Witchel discloses a system wherein the binary files are stored on a memory device. (Lines 3-15 of Column 8).

***Allowable Subject Matter***

8. Claims 3-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:

i. Regarding claim 3, the prior art of record does not teach of a plurality of acceptable program codes are determined based on a plurality of comparisons of a plurality of candidate program codes to a plurality of sets of other candidate program codes, wherein each candidate program code of the plurality of candidate program codes is selected from a universal group consisting of the first candidate program code and the first set of other candidate program codes and each member of each set of other candidate

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program codes of the plurality of other candidate program codes is also selected from the universal group.

j. Regarding claim 8, the prior art of record does not teach of a predetermined multiple of a number of distinct coded required.

### *Conclusion*

- Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tim Bonura**.
  - The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.
  - The examiner can currently be reached at: **703-305-7762**. On or after October 15, 2004 the examiner can be reached at: **571-272-3654**.
- If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, **Rob Beausoliel**.
  - The supervisor can be reached on **703-305-9713**.
- The fax phone numbers for the organization where this application or proceeding is assigned are:
  - **703-872-9306 for all patent related correspondence by FAX.**
- Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you

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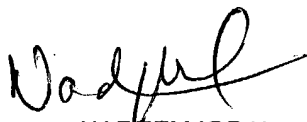
have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

- Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is: **703-305-3900**.
- Responses should be mailed to:

- **Commissioner of Patents and Trademarks**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

  
**NADEEM IQBAL**  
**PRIMARY EXAMINER**

Tim Bonura  
Examiner  
Art Unit 2114

tmb  
September 14, 2004